# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

TRICORE, INC.,

Plaintiff,

MAGISTRATE JUDGE

12393MLW

v.

SAFECO INSURANCE COMPANY OF AMERICA, and R.P. IANNUCCILLO & SONS CONSTRUCTION CO., Defendants.

**COMPLAINT** 

AMOUNT \$ 150 SUMMONS ISSUED YS LOCAL PULE 4.1 WAIVER FORM MCF ISSUED

Parties

- 1. The Plaintiff, Tricore, Inc. ("Tricore"), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business at 100 Sharp Street, Hingham, Plymouth County, Massachusetts.
- 2. The Defendant, Safeco Insurance Company of America ("Safeco"), is an insurance corporation licensed to do business in the Commonwealth of Massachusetts and has a principal place of business at 2800 W. Higgins Road, Suite 110, Hoffman Estates, Illinois.
- 3. The Defendant, R.P. Iannuccillo & Sons Construction Co. ("Iannuccillo"), is a corporation duly organized and existing under the laws of State of Rhode Island with a principal place of business at 70 Calverly Street, Providence, Rhode Island.

#### Jurisdiction

4. Tricore is a corporation organized under the laws of, and with a principal place of business located in, the Commonwealth of Massachusetts.

- 5. Safeco is a foreign corporation with a principal place of business located in the State of Illinois.
- 6. Iannuccillo is a corporation organized under the laws of, and with a principal place of business located in, the State of Rhode Island.
- 7. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332, \$75,000.00.

#### Facts

- 8. On or about January 2, 2002, Tricore entered into an agreement to perform services as a general contractor for Sherrill House, Inc., relating to the Frank Wood expansion project in Boston, Massachusetts (the "Project").
- 9. In connection with providing such services, Tricore entered into a subcontract (the "Subcontract", a conformed copy of which is attached hereto as Exhibit A) with Iannuccillo on April 25, 2002. The subcontract required Iannuccillo to perform work relating to the Project, specifically with regard to the placement of all concrete work, footing walls and slabs.
- 10. As required by the Subcontract, Iannuccillo obtained a performance bond guaranteeing its performance under the Subcontract. Specifically, Iannuccillo obtained Contract Performance Bond No. 600617 from Safeco (the "Bond", attached hereto as Exhibit B).
- 11. Following the execution of the Subcontract, and during the duration of the Project. Tricore repeatedly notified Iannuccillo of its failure to fulfill its contractual obligations under the Subcontract by continually delaying the progress of the Project and by failing to provide work in a good and workmanlike manner.

- 12. In light of Iannuccillo's failure to adhere to the terms of the Subcontract, Tricore terminated Iannuccillo from the Project by letter dated July 1, 2003, such termination to be effective as of July 3, 2003.
- 13. By letter dated July 1, 2003, Tricore initially notified Safeco that it was terminating the Subcontract and was seeking to have Safeco arrange for the performance of Iannuccillo's obligations under the Subcontract in accordance with the terms and conditions of the Bond.
- 14. Thereafter, between July 2003 and the present date, in accordance with the terms of the Bond, Tricore repeatedly notified Safeco in writing on at least seven occasions of the need to begin completing RPI's work (specifically, beginning the placement of the concrete foundation walls), as required by the Bond, by no later than Wednesday, February 11, 2004. Even though Tricore notified Safeco that time was of the essence and that the construction schedule had continued to fall behind due to the delay in the completion of the concrete work and the adverse impact this had on the entire construction project, Safeco failed and refused to remedy the defective work provided by RPI on the Project and to complete the work on the Project that RPI was obligated to provide under the terms of the Subcontract.
- 15. In the wake of Safeco's failure to satisfy its contractual obligations under the Bond by completing the work remaining under the Subcontract on the Project, Tricore was forced to both complete the work remaining to be performed by Iannuccillo under the Subcontract and to remedy the defective work performed by Iannuccillo on the Project.

- 16. Safeco has substantilly breached the terms of the Bond by failing to complete the work remaining to be performed by Iannuccillo under the Subcontract and by failing to remedy the defective work performed by Iannuccillo on the Project.
- 17. Tricore has fulfilled its obligations in accordance with the terms of the Subcontract and the Bond.
- 18. As a direct and proximate result of Iannuccillo's failure to perform in accordance with the terms of the Subcontract, and Safeco's failure to fulfill its contractual obligations under the Bond, Tricore has sustained monetary damages in excess of \$400,000 and will continue to sustain additional damages.

#### Count I - Breach of Contract (Safeco)

- 19. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 20. Safeco substantially breached the Bond by failing to comply with its terms and conditions in failing to both complete the work remaining to be performed by Iannuccillo in accordance with the Subcontract and by remedying the defective work performed by Iannuccillo on the Project.
- 21. As a direct and proximate result of Safeco's substantial breach, Tricore has sustained and will continue to sustain substantial money damages.

- a. Determine that the actions of Safeco constituted a breach of the Bond;
- b. Award Tricore damages against Safeco, plus interest, costs and reasonable attorney's fees; and

Award such other and further relief as the Court deems meet and just in c. these premises.

#### Count II - Violation of M.G.L. c. 93A and M.G.L. c. 176D (Safeco)

- 22. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 23. Safeco has intentionally and without justification failed and refused to comply with the terms and conditions of the Bond, has acted in bad faith in engaging in various delaying tactics in an attempt to avoid paying any claims and in causing Tricore to commence this suit in order to compel compliance with the terms of the Bond.
- 24. The knowing and willful actions of Safeco in refusing to fulfill its obligations under the terms of the Bond are frivolous, oppressive, unscrupulous, without justification or excuse, and therefore constitute both unethical or unfair and/or deceptive acts all in violation of Massachusetts General Laws, Chapter 93A and bad faith settlement practices violative of Massachusetts General Laws, Chapter 176D.
- 25. As a direct and proximate result of Safeco's conduct, Tricore has been and will be forced to suffer substantial money damages and has incurred expenses for attorney's fees and other costs.

- a. Determine that the acts and practices of Safeco are in violation of Massachusetts General Laws, Chapter 93A and/or Massachusetts General Laws, Chapter 176D;
- b. Determine that the acts and practices of Safeco were willful and knowing;

- c. Determine the amount of damages suffered by Tricore;
- d. Award Tricore double or treble damages against Safeco, attorney's fees
   and costs all as provided for under Massachusetts General Laws, Chapter
   93A and Massachusetts General Laws, Chapter 176D; and
- e. Award such other and further relief as this Honorable Court deems meet and just in these premises.

# <u>Count III - Breach of Covenant of Good Faith and Fair Dealing</u> (Safeco)

- 26. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 27. On the basis of the facts set forth above, Safeco willfully and materially breached the covenant of good faith and fair dealing implied in the Bond and in its relationship with Tricore. As a direct and proximate result of the conduct of Safeco, Tricore has sustained and will sustain substantial monetary damages.

- a. Determine that the actions of Safeco constitute a breach of the covenant of good faith and fair dealing;
- Award Tricore damages for breach of the covenant of good faith and fair dealings in the amount so determined including interest, costs, and reasonable attorneys' fees against Safeco; and
- c. Award such other and further relief as this Honorable Court deems meet and just in these premises.

- 28. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 29. Tricore says that an actual and serious controversy has arisen between Tricore and Safeco regarding the terms, conditions and obligations of the respective parties under the Bond.
- 30. Tricore alleges that under the Bond Safeco is responsible to remedy lannuccillo's default under the Subcontract.
- 31. Safeco has refused to remedy Iannuccillo's default under the Subcontract in favor of engaging in delaying tactics to avoid its obligations under the Bond.
- 32. Tricore has already incurred substantial expense in remedying Iannuccillo's default, and unless the liability of Safeco under the Bond is determined Safeco will continue to refuse to undertake its obligations under the Bond, and Tricore will thereby suffer irreparable damage.

WHEREFORE, Tricore demands that this Honorable Court:

- Determine the rights and obligations of Tricore and Safeco under the terms a. of the Bond;
- b. Declare that Safeco is responsible under the Bond for completing the work remaining to be performed by Iannuccillo under the Subcontract and for remedying the defective work performed by Iannuccillo on the Project;
- Declare that it is Safeco's obligation to reimburse Tricore for all costs and c. expenses and attorney's fees incurred by it in completing the work remaining to

be performed by Iannuccillo under the Subcontract and for remedying the defective work performed by Iannuccillo on the Project; and

d. Award such other and further relief as this Honorable Court deems meet and just in these premises.

# Count V - Breach of Agreement (Iannuccillo)

- 33. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 34. Iannucillo substantially breached the Subcontract with Tricore by failing to perform in accordance with its terms and conditions.
- 35. As a direct and proximate result of Iannuccillo's substantial breach, Tricore has sustained and will sustain substantial money damages.

WHEREFORE, Tricore respectfully demands that this Honorable Court:

- a. Determine that the actions of Iannuccillo constituted a breach of the Subcontract;
- Award Tricore damages against Iannuccillo, plus interest, costs and reasonable attorney's fees; and
- c. Award such other and further relief as the Court deems meet and just in these premises.

### Count VI - Violation of M.G.L. c. 93A (Iannuccillo)

36. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.

- 37. Tricore has fulfilled all of its contractual obligations under the Subcontract. On the basis of the facts set forth above, Iannuccillo, intentionally and without justification failed and refused to comply with the terms of the Subcontract, to fulfill its obligations therein, and has acted in bad faith.
- 38. The knowing and willful actions of Iannuccillo are unscrupulous, without justification or excuse, and therefore constitute unethical or unfair and/or deceptive acts all in violation of Massachusetts General Laws, Chapter 93A.
- 39. As a direct and proximate result of the conduct of Iannuccillo, Tricore has been and will be forced to suffer substantial money damages and has incurred expenses for attorneys' fees and other costs.

- a. Determine that the acts and practices of Iannuccillo are in violation of Massachusetts General Laws, Chapter 93A;
- b. Determine that the acts and practices of Iannuccillo were willful and knowing;
- Determine the amount of damages suffered by Tricore; c.
- d. Award Tricore double or treble damages against Iannuccillo, attorney's fees and costs all as provided for under Massachusetts General Laws, Chapter 93A; and
- Award such other and further relief as this Honorable Court deems meet e. and just in these premises.

### **Count VII - Breach of Covenant of Good Faith and Fair Dealing** (Iannuccillo)

- 40. Tricore repeats and reavers the allegations contained in the previous Paragraphs as fully as though they were set out herein.
- 41. On the basis of the facts set forth above, Iannuccillo willfully and materially breached the covenant of good faith and fair dealing implied in the Subcontract and in its relationship with Tricore. As a direct and proximate result of the conduct of Iannuccillo, Tricore has sustained and will sustain substantial monetary damages.

- a. Determine that the actions of Iannuccillo constitute a breach of the covenant of good faith and fair dealing in the relationship between Tricore and Iannuccillo in the Subcontract;
- b. Award Tricore damages for breach of the covenant of good faith and fair dealings in the amount so determined including interest, costs, and reasonable attorneys' fees against Iannuccillo; and
- c. Award such other and further relief as this Honorable Court deems meet and just in these premises.

### PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES AND COUNTS.

Tricore, Inc., By its Attorneys,

Edward D. Kutchin, Esquire BBO No. 281920 Kerry R. Northup, Esquire BBO No. 633016 Kutchin & Rufo, P.C. 155 Federal Street Boston, MA 02110 (617) 542-3000

Dated: November 11, 2004

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Filed 1/12/2004 17 Page 1 of 2 Page 2/3 Page 5

GATELY, MORGAN & GILFOYLE

FOYLE #0651 P.005/008 GENERAL: INSURANCE COMPANY OF MARKE: PRST NATIONAL NEURANCE COMPANY OF AMERICA FOME OFFICE: SARECO PLAZA STATTLE WASHINGTON JAILE

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### CONTRACT PERFORMANCE BOND

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